STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 24, 2003

TO: ALL PARTIES OF RECORD IN APPLICATION 00-11-038 et al.

Decision 03-02-036 is being mailed without the written dissent from both Commissioners Loretta M. Lynch and Carl W. Wood. The dissent will be mailed separately.

Very truly yours,

Angela Minkin, Chief
Administrative Law Judge

Attachment

Decision 03-02-036 February 13, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan (U 39 E).	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

ORDER DENYING REHEARING OF DECISION 02-12-082

I. BACKGROUND

In this decision we address another application for rehearing related to the "Bond Charge Decision" (Decision (D.) 02-10-063), wherein we adopted a methodology for setting a bond charge to recover the Department of Water Resource's (DWR) bond-related costs. In that decision, we adopted a methodology that applies a per kilowatt-hour (kWh) charge on all consumption that is not specifically excluded from the surcharge. We excluded San Diego Gas & Electric Company (SDG&E) residential sales up to 130% of baseline, and all medical baseline and California Alternate Rates Energy (CARE) eligible customer usage from the bond charges.

Several parties, including The Utility Reform Network (TURN), filed applications for rehearing of D.02-10-063. Among other things, TURN argued that imposing the bond charge on residential usage up to 130% of baseline for customers of Pacific Gas & Electric Company (PG&E) and Southern California Edison (SCE) violated Water Code Section 80110, and that the decision was inconsistent in its use of "cost causation" principles. TURN, along with other parties, also claimed that the determination to exclude only SDG&E's residential usage below 130% of baseline unlawfully discriminated against PG&E and SCE's customers.

In response to this latter argument, we determined that PG&E, SCE, and SDG&E's 130% of baseline customers should be treated in the same manner. We issued D.02-11-074, in which we granted rehearing to modify D.02-10-063 by exempting all residential sales below 130% of baseline usage from the bond charge. Although we explained why we did not think TURN's other claims had merit, we ultimately concluded that we did not have to make a determination with respect to TURN's arguments in light of our decision to exempt all 130% of baseline usage from the bond charge. (See D.02-11-074 at pp. 2-4.)

Next, the California Manufacturers & Technology Association, the California Industrial Users and the California Large Energy Consumers Association (CMTA/CIU/CLECA) filed an application for rehearing of D.02-11-074. That application essentially claimed that the decision to exempt all 130% of baseline usage from the bond charge shifted costs from residential usage to other principally non-residential usage and discriminated against non-exempt customers. The application also argued that D.02-11-074 was arbitrary and capricious because it was issued without explanation, and without further hearing and opportunity to brief the issues.

In response to that application, we issued D.02-12-082. In that decision, we reversed D.02-11-074 and again modified the Bond Charge Decision in order to impose the bond charge on all residential usage up to 130% of baseline in all three service territories. TURN has filed a timely application for rehearing of D.02-12-082, in which it

essentially raises the same allegations of legal error as in its application for rehearing of D.02-10-063. TURN also claims that the Decision "is without rational basis, arbitrary and capricious, and an abuse of discretion, in that it changes D.02-11-074… in spite of finding that the allegations of legal error with respect to that decision were 'without merit.'" (TURN App. at 1.) The Office of Ratepayer Advocates (ORA) and the Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF) filed responses to TURN's application.

Although we considered and rejected most of TURN's arguments in D.02-11-074, we will address TURN's arguments on the merits to the extent we have not already done so. This is only because we stated in D.02-11-074 that we did not need to make a determination with respect to TURN's arguments given the fact that we had exempted all 130% of baseline usage from the bond charge. We do not change our standard that to the extent issues have been raised (or could have been raised) and addressed in an application for rehearing, it is improper to raise them in a subsequent application for rehearing of the same decision.

After reviewing the Application for Rehearing and the responses, we are of the opinion that the application does not establish legal error in our Decision, and rehearing should be denied.

II. DISCUSSION

A. TURN's Arguments Concerning the Commission's Interpretation of Water Code Section 80110 to Allow Imposing the Bond Charge on Usage Below 130% of Baseline Are Without Merit.

TURN argues that by imposing the bond charge on residential usage up to 130% of baseline for customers of PG&E and SCE, the Decision violates Water Code section 80110. TURN's argument is a matter of statutory interpretation. The relevant portion of Water Code 80110 provides:

> In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

TURN asserts that the above language was adopted only after an amendment was approved on the Senate floor on January 31, 2001, which deleted the words "electric procurement portion of" from the first line, before the words "electricity charges." According to TURN, this indicates that the Legislature meant that *all charges* for electricity were intended to be covered by the prohibition on increases, and that the specification of a bond charge for 130% baseline usage constitutes an increase in "the electricity charges in effect" at the time of enactment. (TURN App. at 3.) According to TURN, the Decision imposes a new charge, the bond charge, on 130% of baseline usage, at a level in excess of the charge in effect on February 1, 2001, which was zero.

TURN seems to argue that by removing the words "electric procurement portion of," the Legislature intended that no individual component of electric rates can be increased. However, there is no reason to conclude that this was the Legislature's intent. As we stated in D.02-12-074, if the Legislature thought "electric procurement" was a "portion," i.e. subset, of "electricity charges," then this changed language would be less, not more, restrictive. (D.02-12-074, *mimeo*, p. 3.) TURN submits that this conclusion is in error, and argues that since the original language would have barred only increases in the procurement portion of the rate, deleting that limitation means that the legislature intended to impose the restriction more broadly, on all components of the rate. Again, however, TURN's argument does not demonstrate that the Commission improperly or unreasonably construed Water Code Section 80110. In fact, one could reasonably argue that the Legislature thought "electric procurement portion" was a subset of "electricity charges" and removing the subset suggests that the Legislature meant to keep the entire

electric bill fixed, as opposed to keeping just the electric procurement portion (or any one portion) of the bill fixed.[1]

Accordingly, we find TURN's allegation of legal error without merit.

B. TURN's Arguments Concerning Allegedly Inconsistent Use of Cost Causation Principles In the Decision Are Without Merit

TURN argues that the Decision is internally inconsistent in that it cites the policy of "cost causation" in justifying imposing the bond charge on usage up to 130% of baseline, while rejecting cost causation as a basis for allocation of the bond charge elsewhere in the Decision. According to TURN, this reflects a "gross inconsistency" on the issue of cost causation, and unlawfully elevates the Commission's own view of equity over that of the Legislature, which TURN contends expressed a clear view of exempting 130% of baseline usage. (TURN App. at 7.) TURN also questions why the Commission exempted CARE and medical baseline customers at the expense of the Legislature's policy preference with respect to 130% of baseline usage.

TURN's arguments assume that the Commission violated the Legislature's intentions as set forth in Water Code Section 80110. As explained above, there is no violation of Section 80110. The Commission has respected the Legislature's wish that rates for below 130% of baseline usage remain unchanged, while also following the policy of spreading the bond costs over as large a customer base as possible. As for the alleged inconsistency in the application of "cost causation" principles, as we explained before, TURN fails to understand that the Commission looked to broad concepts of cost causation in determining which large classes of customers should pay the bond charge,

[1] In addition, there is no reason to conclude the Legislature intended that no individual charge could be increased in light of other provisions of AB 1X that make clear the obligation of such sales to pay for DWR power. For example, Water Code section 80104 provides that "[u]pon delivery to them, the retail end use customers shall be deemed to have purchased that power from the department. *Payment for any sale shall be a direct obligation of the retail end use customer* to the department." (Emphasis added.) It may be reasonably argued that provisions such as these do not indicate a legislative intent to free baseline usage from all responsibility for DWR's procurement costs.

but rejected the use of strict cost causation principles to determine exactly how much particular classes of customers have to pay.

As for medical baseline and CARE usage, the Commission has determined that certain classes of people who are medically or economically disadvantaged should not pay these charges, and *all* such usage is exempt. What the Legislature has determined is that residential customers, to the extent that they do not use above 130% of baseline, should not experience a rate increase. Many residential customers consume electricity both above and below 130% of baseline in various months, thus the Legislature did not have an intent to exclude certain people from the charges altogether. As such, these classes do not need to be treated the same way, and there is no inconsistency in the Decision in this regard. Accordingly, TURN's allegations of legal error are not persuasive.

C. TURN's Argument that the Commission May Not Modify a Decision on Rehearing Without a Finding of Legal Error Is Without Merit.

According to TURN, the Commission effectively overruled D.02-11-074 on rehearing, without any finding of legal error. TURN argues that no rational explanation was provided for this change of position, and no changed circumstances are cited to justify the change. TURN seems to argue that D.02-12-082 violates Rule 86.1 of the Commission's Rules of Practice and Procedure, because the Decision modifies D.02-11-074 without a finding that it is "unlawful or erroneous."

TURN's arguments are without merit. Rule 86.1 addresses the content and purpose of an application for rehearing. Public Utilities Code sections 1731 and 1732 also address applications for rehearing. Nothing in these provisions requires that the Commission must find legal error in order to grant rehearing and modify a decision.

In addition, we believe the Decision sufficiently explains the reasoning for changing the outcome in this matter. As we explained in D.02-12-082, we recognized there was a problem in the fact that SDG&E's customers were treated differently from

other utilities' customers without sufficient justification. In order to cure this problem, the Commission determined it could legally either exempt all residential usage under 130% of baseline from the bond charge, or impose the bond charge on all such usage. Upon further consideration of the policies reasons supporting each option, we determined that the bond charge should, in fact, be imposed on such usage. We further explained that the policy reasoning for including this usage in the calculation of the bond charge was set forth in Appendix A to D.02-12-082. We reasoned that all customers who took power from DWR after February 1, 2001 have some responsibility for DWR's costs, from a direct cost-causation perspective. We also cited equitable considerations in that DA customers would see rate increases due to the imposition of the bond charge, but that these residential customers would not face rate increases even with the imposition of bond charges. We further noted several other beneficial impacts of spreading the bond charge over as large a base of customers as possible, including the fact that the remainder of bundled customers would pay a lower bond charge, and the fact that including all bundled customers provides additional assurance that bond charges will be fully paid.

Accordingly, we find that our decision to change the outcome concerning the bond charge on 130% of baseline usage is adequately explained and supported by the record. As such, we find TURN's arguments without merit.

III. CONCLUSION

TURN's application for rehearing fails to demonstrate legal error in Commission Decision 02-12-082.

Therefore, **IT IS ORDERED** that:

TURN's Application for Rehearing of Decision 02-12-082 is denied.

This order is effective today.

Dated February 13, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

I will file a dissent.

/s/ CARL W. WOOD
Commissioner